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FEB 10 2011

DISCIPLINARY COMMISSION OF THE
SUPREME COURT OF ARIZONA

BEFORE THE DISCIPLINARY COMMISSION
OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF AN APPLICATION
FOR REINSTATEMENT OF A SUSPENDED
MEMBER OF THE STATE BAR OF ARIZONA,

BERNARD M. STRASS,
Bar No. 013684

APPLICANT.

) No. 10-6009

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) **DISCIPLINARY COMMISSION**
) **REPORT**

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This matter came before the Disciplinary Commission of the Supreme Court of Arizona on January 22, 2011, pursuant to Rules 64 and 65, Ariz.R.Sup.Ct., for review of the Hearing Officer's Report filed December 10, 2010, recommending reinstatement, two years of probation with the State Bar's Member Assistance Program (MAP), and costs. The Disciplinary Commission requested oral argument. Applicant, Applicant's counsel and counsel for the State Bar were present. The State Bar does not oppose the reinstatement subject to the terms of probation as recommended by the Hearing Officer.

Applicant was suspended for six months and one day retroactive to February 16, 2007, for violating ERs 1.1, 1.2(a), 1.3, 1.4(a), 1.5(c), 1.16(d), 3.2, 8.4(c) and 8.4(d). In the underlying discipline matter, Applicant suffered significant burn out from stress, anxiety and depression related to his divorce which impaired his professional responsibilities to his clients. Applicant voluntarily closed his practice in 2005 and became a high school teacher. A medical evaluation conducted in 2010, reflects that Applicant is no longer suffering from any undue stress or any mental health issues and can return to the practice of law.

1 The Hearing Officer found that pursuant to Rule 65(b)(2), Applicant has proven by clear
2 and convincing evidence his rehabilitation, compliance with discipline orders, fitness to
3 practice, and competence. He has also identified the weaknesses that caused his prior
4 misconduct and demonstrated the positive actions he has taken to overcome those
5 weaknesses as set forth in *In re Arotta*, 208 Ariz. 509, 96 P.3d 213 (2004).

6 **Decision**

7 Having found no facts clearly erroneous, the seven members¹ of the Commission
8 unanimously recommend adopting and incorporating by reference the Hearing Officer's
9 findings of fact, conclusions of law, and recommendation that Applicant Bernard M.
10 Strass be reinstated to the practice of law, placed on two years of probation (MAP), and
11 pay all costs associated with these proceedings.² The specific terms of probation are as
12 follows:
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14 **Terms of Probation**

15 1. Applicant's term of probation is effective the date of the order of
16 reinstatement and shall terminate two years thereafter.

17 2. Within 30 days of the date of the order of reinstatement, Applicant shall
18 contact the Director of MAP. If deemed appropriate, Applicant shall submit to a new MAP
19 assessment unless the prior assessment by Dr. Joel Glassman dated September 14, 2010 is
20 deemed appropriate. The Director of MAP shall develop "Terms and Conditions of
21 Probation" and the terms shall be incorporated herein by reference. Unless determined
22 otherwise by the Director of MAP, Applicant shall participate in the member support group
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26 ¹Commissioners Belleau and Horsley did not participate in these proceedings.

² A copy of the Hearing Officer's Report is attached as Exhibit A.

1 and meet regularly with a peer monitor. Applicant shall be responsible for any costs
2 associated with MAP.

3 3. The MAP terms shall include terms that Applicant must retain and consult
4 with a personal counselor or therapist on a regular basis as determined by the counselor or
5 therapist.

6 4. The State Bar shall report material violations of the terms of probation
7 pursuant to Rule 60(a)(5), Ariz.R.Sup.Ct., and a hearing may be held within thirty (30) days
8 to determine if the terms of probation have been violated and if an additional sanction
9 should be imposed. The burden of proof shall be on the State Bar to prove non-compliance
10 by a preponderance of the evidence.

11 RESPECTFULLY SUBMITTED this 10th day of February 2011.

12
13
14 Pamela M. Katzenberg/mps
15 Pamela M. Katzenberg, Chair
16 Disciplinary Commission

17 Original filed with the Disciplinary Clerk
18 this 10th day of February 2011.

19 Copy of the foregoing mailed
20 this 11th day of February 2011, to:

21 Nancy Greenlee
22 Respondent's Counsel
23 821 E. Fern Drive North
24 Phoenix, AZ 85014-3248

25 Shauna R. Miller
26 Senior Bar Counsel
4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288

Copy of the foregoing hand delivered
this 11 day of February 2011, to

Hon. Louis Araneta
Hearing Officer 6U
1501 W. Washington, Suite 104
Phoenix, AZ 85007

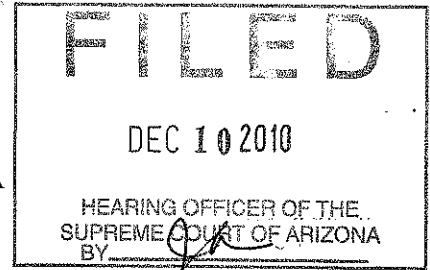
by Deann Bala

/mps

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EXHIBIT A

**BEFORE A HEARING OFFICER
OF THE SUPREME COURT OF ARIZONA**



IN THE MATTER OF A SUSPENDED)
MEMBER OF THE STATE BAR)
OF ARIZONA,)

No. 10-6009

BERNARD M. STRASS,)
Bar No. 013684)

APPLICANT.)

HEARING OFFICER'S REPORT

PROCEDURAL HISTORY

1. On July 21, 2010, Bernard M. Strass (hereafter "Applicant") filed his Motion for Reinstatement Pursuant to Rule 65. On October 26, 2010, the hearing was held. Present at the hearing were Bar Counsel Shauna Miller, Applicant, his counsel Nancy A. Greenlee, and this Hearing Officer.

2. Previously, Applicant was suspended for six months and one day effective February 16, 2007. On or about July 21, 2010, Applicant filed his Motion for Reinstatement Pursuant to Rule 65, with the Supreme Court of Arizona. The procedure and standards under Rule 65, Ariz. R. Sup. Ct.¹ apply.

3 At the conclusion of the hearing, State Bar counsel agreed with the Motion and recommended reinstatement.

FINDINGS OF FACT

4 This case involves Applicant who as an attorney in 2004 and 2005 suffered significant burn out from stress and depression resulting from his personal life, particularly his prior divorce. The prior Hearing Officer found that while not a defense, Applicant's impairment

¹ Ariz. R. Sup. Ct. will hereafter be referenced with "Rule" followed by the relevant rule's numerical designation.

from his personal and emotional problems was a substantial contributing factor in his prior misconduct. Exhibit 3, page 9.

5. Applicant, age 54, was first admitted to practice law in the state of Arizona on May 18, 1991. The Arizona Supreme Court Judgment and Order dated November 30, 2007, in file number SB-07-0166-D, which suspended Applicant from the practice of law for a period of six months and one day, was made retroactive to February 16, 2007 (Exhibit 5), the date the parties had filed their Tender of Admissions and Agreement for Discipline by Consent. Exhibit 3.

6. Applicant's suspension was based on his most serious misconduct that involved the failure of his duty in 2004 and 2005 to represent client Mr. Paz in his claims from two separate auto accidents. In part, Applicant had failed to provide competent representation, failed to act with reasonable diligence and promptness and to abide by the client's decisions. One of the client's cases was dismissed and the other case resulted in a contrary arbitration decision being non-appealable because Appellant did not notify his client in time to attend the arbitration. Thereafter, Applicant misrepresented the true status of the two cases to his client, thereby deceiving him. Applicant violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.1, 1.2, 1.3, 1.4, 1.16(d), 3.2 and 8.4 (c) and (d). Exhibit 3.

7. In recommending suspension, the prior Hearing Officer recognized Applicant's personal or emotional problems as significant factors which impaired his professional responsibilities to his client. Exhibit 3, paragraph 1, page 9.

8. At hearing, Applicant reaffirmed that in 2004 and 2005 he had become depressed and suffered from anxiety in large part due to his acrimonious divorce. He was concerned that he

might harm other clients beyond Mr. Paz. Before his prior disciplinary process took place in 2007, Applicant closed his individual practice in 2005 and become a high school teacher in August, 2005. T/H 14:9-20

9. Applicant intended to pursue a career in school administration, possibly as a principal. While teaching, Applicant obtained his master's degree in education to improve his chances to be hired as a school administrator or principal. However, the economic recession greatly reduced the opportunities for new school administrators and principals to be hired. T/H 17:18-18:4

10. In October, 2009, Applicant contacted Hal Nevitt, the Director of the Lawyer Assistance for the State Bar of Arizona to obtain information about the reinstatement process.

11. Since approximately February, 2010, Applicant has regularly attended the lawyer member support group meetings on alternate Thursdays through the time of the hearing in October, 2010. T/H 218:22-219:12

12. Clinical psychologist Dr. Joel Glassman conducted a psychological evaluation of Applicant and prepared a report dated September 14, 2010. Exhibit B.

13. Dr. Glassman testified that his review of Applicant's background in the 2005 timeframe revealed extreme stress. Applicant was anxious and depressed and overwhelmed by financial matters and was going through a very stressful divorce dealing with his children and wasn't able to concentrate well on his job. During the divorce proceedings Applicant was diagnosed with depression and anxiety. He was also prescribed anti-depressant medication for a period of months. T/H 24:11- 25:9.

14. Dr. Glassman testified that Applicant is no longer suffering from any undue stress or any mental health issues. The results of the MMPI-2 were within normal limits. T/H 22:13-23; Exhibit B.

15. Dr. Glassman further testified that Applicant realized and regretted his prior misconduct. T/H 25:9-12. In deceiving his former client about the status of his cases, Applicant identified to Dr. Glassman as a weakness his desire to protect his self-esteem. In going through the divorce, he did not want to be seen as a failure in his personal life. In trying to cover up the mistakes to his client, he did not want to be seen as a professional failure.

16. Dr. Glassman testified that the more easily corrected part of Applicant's prior misconduct involving calendaring practices can be improved by having an office staff member separately calendar Applicant's filing dates. T/H 25:9-22.

17. Regarding the more serious issue of stress and related anxiety and depression, Dr. Glassman reported that in 2004 and 2005, Applicant did not appreciate the impact that stress in his personal life was having on him at work. Applicant now understands first hand this connection and wants to have a personal counselor or therapist make sure that any future stress levels do not reach a point where Applicant will return to a prior pattern. Exhibit B, page 5. Dr. Glassman testified that his recommendation of an individual counselor for Applicant was vital so that the counselor could make sure Applicant stays on course with no major changes in his condition and that he is functioning well. The counselor could provide a "well check-up" and be a good safeguard. T/H 25:9-28:5.

18. Dr. Glassman concluded that if Applicant followed through with his personal counseling, Applicant could resume the practice of law and perform appropriately. T/H 28:6-12.

19. The Director of Lawyer Assistance Hal Nevitt testified that if Applicant were reinstated, an assessment by a mental health professional would be conducted [if not yet conducted] to determine whether Applicant was depressed or in need of counseling or support. In addition Applicant would be paired with a peer support monitor to meet on a regular basis, would continue to attend the alternate week member support group meetings, and meet with Mr. Nevitt on a quarterly basis. The weekly phone contact and monthly face to face contact with a peer support monitor will provide an additional monitor to check for stress or depression. T/H 55:16-56:24.

20. Mr. Nevitt observed Applicant in the member support group. Applicant progressed from: (1) his initial disclosure of prior stress, depression and dissatisfaction with the practice of law; (2) to seeing how his desire to become engaged in the practice of law has been revived. Mr. Nevitt stated that Applicant helps other people in the group with issues of stress or depression. T/H 63:13-23.

21. Applicant testified about his prior law practice. The bulk of his 25 years as an attorney was in bankruptcy law, both debtor and creditor. He also did civil litigation and property recovery for rent-to-own furniture companies in Arizona. However, Applicant expanded the areas of his practice. He also practiced a fair amount of family law and some personal injury and estate planning work. He largely worked for himself except for two years and seven months when he worked for a personal injury law firm and a general practice firm. T/H 107:4-25.

22. When the divorce proceedings began in 2004, Applicant had been married 20 years. He and his estranged wife had three boys ages 10, 14, and 18. T/H 103:9-104:13; 121:9-21.

23. Applicant testified that in 2004 and 2005 the divorce proceeding was devastating to him. It made him depressed and anxious. It absorbed nearly all his attention. It kept him up at night and caused him to be unable to function. T/H 147:9-16.
24. Applicant testified that in 2005 he realized what he had done to his client Mr. Paz. He knew that if he continued to handle cases he would do more damage. T/H 147:21-148:4.
25. The divorce process ended in October, 2005. At about the same time, Applicant filed bankruptcy which eventually resulted in a Chapter 7 discharge of debts.
26. In 2005, Applicant received the opportunity to teach driver education at Mesquite High School in Gilbert. Applicant had been a teacher before practicing law and still had his certificate. He began teaching in August, 2005 and closed his law practice. T/H 148:14-20.
27. As mentioned, Applicant initially intended to go into education administration, but the housing bubble burst and the hiring of new administrators largely stopped. T/H 17:18-18:2. Applicant closed his practice before the prior disciplinary process took place and had already been teaching at least a year and a half when the prior disciplinary hearing was held. T/H 155:23-156:19.
28. Applicant testified he used the five years in teaching to gain perspective about himself. He contacted Hal Nevitt to get information about the reinstatement process. T/H 162:18-163:15.
29. Applicant believes he has identified stress as the weakness which caused his prior misconduct and he has acquired the tools to minimize the recurrence of any misconduct. He will use a duplication or redundancy calendaring system with a staff member who will open his mail and enter critical filing and order dates. T/H 162:18-163:15.
30. Applicant described the tools he will use to deal properly with future stress if reinstated as a lawyer: (1) He will continue to meet with the member support group: (2) He will implement

the recommendation from Dr. Glassman and Hal Nevitt that he will regularly talk to a counselor. T/H 170:1-171:7: (3) He will be more open in communicating information about himself. Previously when applicant revealed personal information to his then wife, she would relay it to her parents who would then pass judgment on Applicant. As of November 9, 2010, Applicant will have married his fiancée with whom he states he can share everything. T/H 170:1-171:7: (4) He will continue his regimen of vigorous regular exercise. T/H 190:17-191:2: (5) he will structure his law practice where he can regularly discuss the status of his cases. He hopes and plans to work for a law firm where he can discuss the status of his cases with other lawyers. If he works for himself, he would like to hire or use a retired lawyer on a monthly or quarterly basis to review the status of his cases with him. T/H 171:8-172:15; and (6) if Applicant returns to work for himself, he intends to limit his practice to bankruptcy law because that is what he enjoys most and what he has done throughout his law career. T/H 172:1-15. On his own, Applicant also researched resources for stress management and created a reference source for himself. Exhibit C. T/H 222:14-223:7.

31. Regarding competency, Applicant believes he will be readily able to practice bankruptcy law if reinstated. He was familiar with the impending 2006 bankruptcy law changes before he left practice. He would do the needed research of cases and prior preparation to obtain the requisite level of competence in keeping with ER 1.1. Applicant stayed apprised of bankruptcy law because he kept his computer and software for EZ Filing and has been reading the bankruptcy updates sent to him. T/H 225:5-16.

32. Applicant concluded his testimony by acknowledging that if reinstated, the above described tools for dealing with stress are all part of an ongoing process to help him so that he never gets to the place he was in 2005. T/H 210:1-17.

33. After hearing Applicant's testimony, State Bar counsel recommended reinstatement concurrent with probation terms requiring the services recommended by Dr. Glassman and Hal Nevitt. T/H 228:8-229:24.

34. Applicant has paid all the financial obligations to be eligible for reinstatement. Affidavit to Motion for Reinstatement Pursuant to Rule 65, filed July 21, 2010.

CONCLUSIONS OF LAW

35. Pursuant to Rule 65(b)(2), this Hearing Officer finds that Applicant has proven by clear and convincing evidence his rehabilitation, compliance with discipline orders, fitness to practice, and competence. Consistent with the ruling in *In re Arrotta*, 208Ariz. 509, 96 P.3 213 (2004), Applicant identified the causes of his prior misconduct and brought forth clear and convincing evidence showing the positive actions he has taken to overcome the weaknesses that led to his suspension. *Id.* At 515, 219.

RECOMMENDATION

36. This Hearing Officer considered Applicant's testimony and observed his demeanor at the hearing. It appears that Applicant genuinely has rekindled his desire to practice law again and that he more fully understands how any future stress if not properly managed can affect his mental health, his happiness and ability to perform his professional obligations to clients. When asked what he learned from his stress-related burnout in 2005, Applicant answered:

"Well, I now understand what stress can do to you Well, it turns out I couldn't fix everything [for clients]. And I broke two things [for Mr. Paz] and wound up getting suspended. So I understand that -- that I can't fix everything, and that I shouldn't take on more than I can handle, and that I need to manage my life and the stress in my life and ask others to help me do it.

It's kind of an interesting revelation when you do finally ask other people to help you, and you realize that other people are like "Okay, fine." You know, that they're willing to, that they're actually interested in helping you, that they don't want something from you." T/H 174:12-175:6.

37. There is no guarantee that Applicant will not commit future misconduct. However, to his credit, he realized in 2005 that he was impaired by stress and he did not want to harm other clients, so he stopped practicing law. For the past 11 months, he has voluntarily attended the member support group on alternate weeks. His voluntary attendance demonstrates his genuine commitment to properly handle any future stress. He has indentified the potential for future stress if reinstated and is ready to use the tools on probation and therefore to minimize the recurrence of any misconduct.

38. With the required probation terms described below, the public will be protected while Applicant is reinstated to practicing law. Based on the facts of this case, this Hearing Officer recommends to the Disciplinary Commission that Applicant be reinstated as an active member of the Arizona State Bar and placed on probation for a period of two years. Probation shall include the following terms and conditions:

- a. Applicant's term of probation shall begin to run on the effective date of his reinstatement and shall terminate two years thereafter;
- b. Applicant shall contact the Director of the State Bar's Member Assistance Program (MAP) within 30 days of the date of the order of reinstatement. If deemed appropriate by the Director, Applicant shall submit to a new MAP assessment unless the prior assessment by Dr. Joel Glassman dated September 14, 2010 is deemed appropriate. The Director of MAP shall develop terms and "Conditions of Probation" and the terms shall be incorporated herein by reference. Unless determined otherwise by the Director

- of MAP, Applicant shall participate in the member support group and meet regularly with a peer monitor. Applicant shall be responsible for any costs associated with MAP.
- c. The MAP terms shall include terms that Applicant must retain and consult with a personal counselor or therapist on a regular basis as determined by the counselor or therapist.
- d. In the event that Applicant fails to comply with any of the foregoing probation terms, and information thereof is received by the State Bar of Arizona, Bar Counsel shall file a Notice of Noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5).² The Presiding Disciplinary Judge may conduct a hearing within 30 days after receipt of notice, to determine if the terms of probation have been violated and if an additional sanction should be imposed. If there is an allegation that Applicant failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by preponderance of the evidence.
- e. Applicant shall also pay all costs incurred by the Disciplinary Clerk's Office and the Supreme Court in this matter.

DATED this 10 day of December, 2010.

Louis A. Araneta / new
Honorable Louis Araneta
Hearing Officer 6U

Original filed with the Disciplinary Clerk
this 10 day of December, 2010.

Copy of the foregoing mailed
this 4 day of January, 2010, to:

Nancy A. Greenlee

² Rule 60(a)(5), as revised, effective January 1, 2011.

Applicant's Attorney
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/jsa